

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA,

v.

EDWIN COLON,

Defendant.

18-CR-244 (JLS) (MJR)

19-CR-192 (JLS) (MJR)

DECISION AND ORDER

Defendant Edwin Colon is charged in a December 13, 2018 indictment with possession of cocaine with intent to distribute, using and maintaining a drug-involved premises, and possession of a firearm in furtherance of a drug trafficking crime. 18-CR-244, Dkt. 15. Colon is also charged, by a subsequent indictment in a separate criminal case, with failure to appear after pre-trial release and contempt of court order. 19-CR-192, Dkt. 1. In both cases, United States Magistrate Judge Michael J. Roemer was designated to hear and determine, and report and recommend on, all pre-trial proceedings under 28 U.S.C. §§ 636(b)(1)(A) and (B). 18-CR-244, Dkt. 17; 19-CR-192, Dkt. 6.

Presently before the Court is Judge Roemer's joint Report and Recommendation ("R&R") and Order addressing the Government's motion for joinder, the Government's request for reciprocal discovery, Colon's motion to suppress evidence, Colon's motion to dismiss certain charges, and Colon's omnibus

discovery demands. For the reasons set forth below, the Court accepts and adopts Judge Roemer's recommendations and affirms Judge Roemer's order.

BACKGROUND

Colon was charged by criminal complaint on June 29, 2018. 18-CR-244, Dkt.

1. Shortly thereafter, Judge Roemer ordered Colon released on conditions. *Id.* Dkts. 5, 6. On December 13, 2018, Colon was charged in a three-count indictment with possession of cocaine with intent to distribute, using and maintaining a drug-involved premises, and possession of a firearm in furtherance of a drug trafficking crime. *Id.* Dkt. 15. On March 11, 2019, Colon moved to suppress any physical evidence recovered from his person, vehicle, or residence on March 1, 2018, as well as making various discovery demands. *Id.* Dkt. 22.

Colon subsequently allegedly removed his electronic monitoring device and absconded from the Western District of New York in March 2019, and a warrant was issued for his arrest. *Id.* Dkt. 26. Colon was arrested in Puerto Rico on October 9, 2019, and was extradited back the Western District of New York. *Id.* Dkts. 27, 28.

Colon was arraigned on a new indictment in Case No. 19-CR-192 on March 9, 2020, which charged him with failure to appear and contempt of court. 19-CR-192, Dkts. 1, 7. Shortly thereafter, Colon's new counsel filed a supplement to the pending suppression motion in Case No. 18-CR-244, *see* Dkt. 48—as well as a motion to dismiss the failure to appear charge and omnibus discovery demands in the second case, Case No. 19-CR-192, *see* Dkt. 26. The Government moved to join

the charges in Case No. 18-CR-244 and Case No. 19-CR-192 into a single indictment. 19-CR-192, Dkt. 24. Judge Roemer heard oral argument on the pending motions and ordered additional briefing. 18-CR-244, Dkt. 51; 19-CR-192, Dkts. 32, 33, 34.

On March 31, 2021, Judge Roemer issued a joint R&R and Order, in which he recommended that Colon's motions to suppress evidence and to dismiss the failure to appear charge be denied. *See* 18-CR-24, Dkt. 53, at 29; 19-CR-192, Dkt. 36, at 29. Judge Roemer granted the Government's motion for joinder and resolved the discovery demands and requests, including granting the Government's request for reciprocal discovery. *See generally id.*

After receiving extensions, Colon objected to the R&R and Order on August 12, 2021. 18-CR-244, Dkt. 62; 19-CR-192, Dkt. 47. Specifically, Colon objected to Judge Roemer's recommendation that the motion to suppress be denied and to Judge Roemer's order that the cases be joined into a single indictment. *Id.* The Government responded on August 27, 2021. 18-CR-244, Dkt. 64; 19-CR-192, Dkt. 49. Colon did not reply.

DISCUSSION

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Crim. P. 59(b)(3). A district court must conduct a *de novo* review of those portions of a magistrate judge's recommendation to which a party objects. 28 U.S.C. § 636(b)(1); Fed. R. Crim. P. 59(b)(3). As for non-dispositive matters, the district judge reviews appeals of a

magistrate judge's order under a clearly erroneous or contrary to law standard. Fed. R. Civ. P. 72(a); *see United States v. Kelly*, No. 18-CR-217-A, 2021 WL 1920777, at *2 (W.D.N.Y. May 13, 2021) (reviewing non-dispositive orders denying motions for disclosure of certain information under a clearly erroneous or contrary to law standard of review).

This Court has reviewed Judge Roemer's R&R and Order, the objections, and the relevant record in this case. Based on that review, the Court accepts and adopts Judge Roemer's recommendations to deny Colon's motions to suppress and to dismiss the failure to appear charge. As for Colon's objections to Judge Roemer's order granting the motion for joinder, the Court concludes that Judge Roemer's order was not clearly erroneous or contrary to law. Thus, this Court affirms Judge Roemer's order.

CONCLUSION

For the reasons stated above and in the R&R, the Court DENIES Colon's motions to suppress and to dismiss. The Order is otherwise affirmed. If not done already, the Clerk of Court is directed to take all steps necessary to reflect that 18-CR-244 and 19-CR-192 are joined together for trial.

The parties shall appear before this Court on September 14, 2021 at 1:30 p.m. for a status conference to set a trial date.

SO ORDERED.

Dated: September 10, 2021
Buffalo, New York



JOHN L. SINATRA, JR.
UNITED STATES DISTRICT JUDGE